

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE  
ANTITRUST LITIGATION

Case No.: 11-CV-02509-LHK

ORDER DENYING MOTION TO  
ENFORCE THIS COURT'S CASE  
MANAGEMENT ORDER

THIS DOCUMENT RELATES TO:

**ALL ACTIONS**

Plaintiffs have filed an Administrative Motion to Enforce this Court's Case Management Order. *See* ECF No. 601. Defendants have filed an Opposition. *See* ECF No. 609. For the reasons stated below, the Court DENIES Plaintiffs' Motion.

This Court's December 18, 2013 set the page limits for briefing on the parties' *Daubert* motions as follows: "The parties' *Daubert* motions shall be limited to a total of 25 pages per side, with oppositions not to exceed a total of 25 pages per side, and replies not to exceed a total of 15 pages per side." *See* ECF No. 547. On January 9, 2014, Defendants filed a 15-page Joint Motion to Exclude Expert Testimony of Dr. Leamer ("Motion to Exclude Dr. Leamer"), *see* ECF No. 570, and a 10-page Joint Motion to Exclude Expert Testimony of Dr. Marx, *see* ECF No. 559. In addition, on the same day, after seeking a hearing date from the Court, Defendants filed a 10-page

1 Joint Motion to Strike Improper Rebuttal Testimony in Dr. Leamer's Reply Expert Report  
2 ("Motion to Strike Dr. Leamer's Improper Rebuttal"). *See* ECF No. 557.

3 Plaintiffs contend, in their instant Motion, that all three of these motions should count as  
4 *Daubert* motions, and accordingly, that Defendants have exceeded the 25-page limit. *See* ECF No.  
5 601. In their Opposition, Defendants contend that the Motion to Strike Dr. Leamer's Improper  
6 Rebuttal is not a *Daubert* motion, but rather is a motion to enforce agreed-upon discovery  
7 limitations. *See* ECF No. 609.

8 The Court agrees with Defendants. The Motion to Strike Dr. Leamer's Improper Rebuttal is  
9 not a *Daubert* motion in form or substance. The Motion to Strike Dr. Leamer's Improper Rebuttal  
10 does not cite *Daubert* or Rule 702. *See* ECF No. 557 at ii-iii (Table of Authorities). More  
11 importantly, the Motion to Strike Dr. Leamer's Improper Rebuttal does not address any of the  
12 subjects usually addressed in a *Daubert* motion, such as the expert's qualifications, the reliability  
13 of his methodologies, or the applicability of the methodologies to the facts of the instant litigation.  
14 *See id.* Rather, the Motion to Strike Dr. Leamer's Improper Rebuttal is, in essence, a discovery  
15 motion. Defendants seek to strike portions of Dr. Leamer's Reply Report on the basis that certain  
16 opinions contained therein were not disclosed in his opening expert report. This failure to disclose,  
17 Defendants contend, violates the parties' agreement, the Court's discovery limitations, and the  
18 Federal Rules of Civil Procedure.

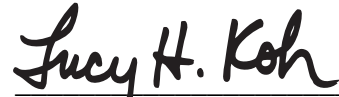
19 The Court disagrees with Plaintiffs' contention that "even a cursory examination reveals  
20 [that] the motion to strike Dr. Leamer's reply is entirely redundant to and repetitive of the motion  
21 to exclude his testimony, and reflects basically extra pages addressing the same issues." *See* ECF  
22 No. 601 at 2. While there is some overlap between the substantive opinions that Defendants seek to  
23 strike in the Motion to Strike Dr. Leamer's Improper Rebuttal and the substantive opinions that  
24 Defendants seek to exclude in the Motion to Exclude Dr. Leamer, the *bases* for striking or  
25 excluding this testimony are different in the two motions. While the Motion to Exclude Dr. Leamer  
26 seeks to exclude the opinions on *substantive* grounds (challenging, for example, the reliability of  
27 various of Dr. Leamer's methodologies), the Motion to Strike Dr. Leamer's Improper Rebuttal  
28 seeks to strike Dr. Leamer's opinions on *procedural* grounds (because such opinions were not

1 timely disclosed).<sup>1</sup> Accordingly, the Court finds that the similarity in the opinions sought to be  
2 excluded or stricken by the two motions does not render the Motion to Strike Dr. Leamer's  
3 Improper Rebuttal an extra *Daubert* motion.

4 For the foregoing reasons, the Court DENIES Plaintiffs' Administrative Motion to Enforce  
5 this Court's Case Management Order.

6  
7 **IT IS SO ORDERED.**

8 Dated: February 18, 2014



LUCY H. KOH  
United States District Judge

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  

---

<sup>1</sup> The Court notes that as a discovery motion, the Motion to Strike Dr. Leamer's Improper Rebuttal could be referred to Magistrate Judge Grewal. However, the Court finds that because trial is quickly approaching and because some of the same opinions are subject to challenge on procedural and substantive grounds, judicial efficiency weighs in favor of the presiding judge considering both motions.